Issues and Dilemmas in School Disciplinary Hearings

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WHAT ARE YOUR HURDLES?

SECURITY

Keeping all parties safe during a hearing is key!

Common Dilemmas in Security

No School Resource Officers or Security assigned to the location of the hearing

No metal detectors

Rooms sizes vary

PREVENTATIVE MEASURES

"Knowledge is NOT power.
Knowing a concept is only POTENTIAL value.
The EXECUTION of knowledge
is where your power lies."

-Tony Robbins

HEARING OFFICERS

Dilemmas a Hearing Officer

Relationships

Be the epitome of professionalism

Avoid “power hungry” attitude

Do not allow personal relationships to cloud your judgement

Training

Attend all necessary training sessions

Be fair and ethical in all manners of the hearing

Follow all State Law and Governance Board policies

Pro Se Litigants

- Parents
- Guardians
- Students
- Advocates

- *A person who represents himself/herself in court…without the assistance of an attorney.*

Dilemmas with Parents in a Hearing

- **Lack of knowledge of the procedures, processes, or laws:**
  - *In loco parentis*
  - Administrative interviews/ investigations
  - Burden of Proof
  - Search and Seizure
  - Jurisdiction
  - FERPA
  - Hearsay vs. Evidence
  - Self-Defense
  - Subpoenas
  - Unprepared

Search and Seizure

- ***In Loco Parentis***
  - Courts have ruled that schools act *in loco parentis* (they act with the authority of a parent, not as an agent of the state). Therefore, they would not be prohibited from searches/seizure by the 4th amendment.
  - ***If student/staff safety is in question, schools have the right to search!***

- In New Jersey vs. T.L.O., the Supreme Court provided clarification where schools stand in relation to the 4th amendment.
  - Students do not lose their 4th Amendment rights at the schoolhouse gate.
  - However, there is a need for schools to have a balance between a student's rights to privacy and the school's need to maintain an orderly environment.
  - Likewise, the standard of "probable cause", required of police, is not reasonable for schools. Instead, the standard of reasonable suspicion is required.
    - ***The search must be reasonable at its inception.***
    - ***When conducted, the search must be reasonably related in scope to the circumstances which justified the search in the first place.***

"My child is a minor! You can't talk with her without me!"

"You have NO RIGHT to search my child!"

Burden of Proof

- The burden of proof for student discipline is not the same as the burden of proof for criminal proceedings. Instead of "beyond a shadow of a doubt" standard, student discipline cases only require a "preponderance of evidence" standard. This means that in order for a student to receive consequences, more evidence must exist that proves the student committed the act than exists showing they did not commit the act.

"My child said he did not do it! I believe him! That teacher is lying! You have no proof!"

State Board

- The Georgia State Board of Education requires an "any evidence" standard to uphold a local board decision. This means that if laws and procedures have been followed and the school provided anything (other than hearsay evidence) in support of the charges, the state board will not overturn the local board's decision. The State Board lends no credibility to *just* written statements (since they are hearsay and cannot be cross-examined).

Jurisdiction is the territorial range of authority or control. In other words, the school's jurisdiction is the scope of locations and times in which the school has the power to issue consequences for behavior.

"That social media post was made over the weekend! You can't punish her for what happens in MY HOME!"

Jurisdiction

Scope of the Code

FERPA

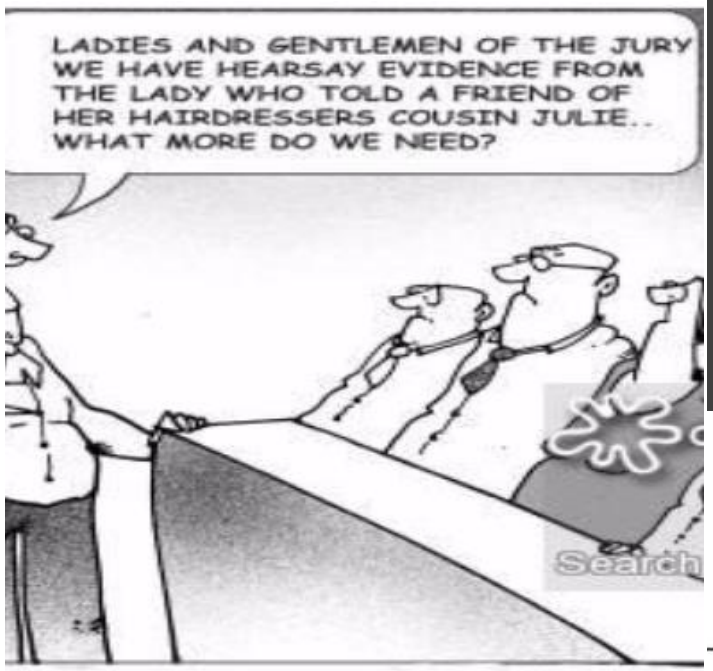
- "Why isn't the other student here at a hearing? He hit my child first!"
- "I want a copy of that video! My child is on it, too! I have a right to a copy!
- "I bet the other student has a discipline record a mile long! Why didn't you protect my child! He's been bullied in school his whole life!"

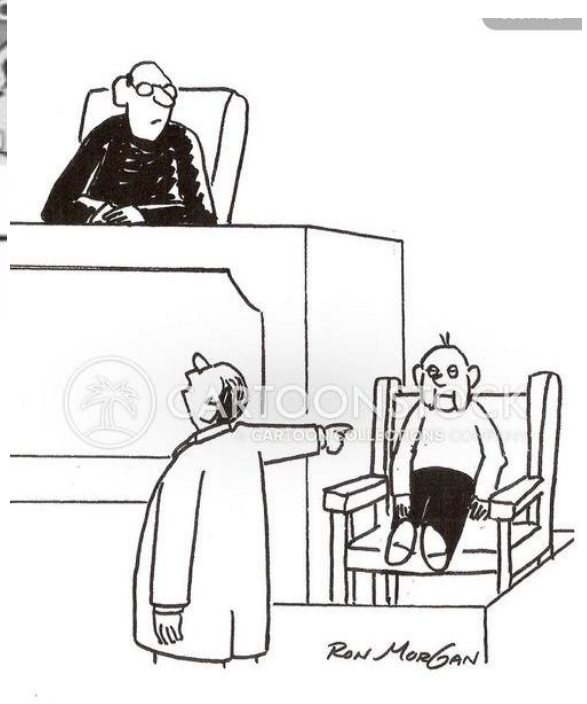
FERPA - What's Protected?

Confidential

- Student ID#
- Social Security #
- Grades
- Physical Location
- Enrollment History
- Student Conduct

This info can only be released with ***explicit, written consent*** of the student or via an appropriate legal request.





"Objection! Everything the witness has stated is nothing more than hearsay."

Hearsay vs. Evidence

- Parents tend to attempt to testify for the student without first-hand knowledge.
- Parents tend to dismiss the testimony of other live witnesses based on the information they have heard second-hand.
- Hearing officers may admit hearsay for these types of hearings and weight the evidence accordingly. However, hearsay cannot stand alone as the sole evidence for the case.

SELF-DEFENSE

"My child had a right to defend himself!"

In the Know: Self-Defense Guidance from Board Attorneys

GWINNETT COUNTY PUBLIC SCHOOLS' GUIDANCE ON SELF-DEFENSE/JUSTIFICATION FOR STUDENT DISCIPLINE

Self-Defense/Justification: The Gwinnett County Board of Education recognizes that students have a right to defend themselves or others by threatening or using force against another when and to the extent that the student reasonably believes that such threat or force is necessary to defend the student or a third person against another's imminent use of unlawful force. Despite the foregoing, students may be disciplined when the student's threat or use of force was not necessary, the level of force or the extent of the threat exceeded what was necessary, the other person's threat or use of force was not imminent, the student's actions initially provoked the altercation, the student was a participant in a mutual physical altercation, or the student was the aggressor. When a student claims their actions were justified, the student carries the burden of proof in establishing that the actions were justified. (Gwinnett County Public Schools 2021-2022 Student/Parent Handbook, MIDDLE/HIGH SCHOOL, pages 14-15)

CONSIDERATIONS WHEN EVALUATING CLAIMS OF SELF-DEFENSE

- Every student participating in a fight is not necessarily subject to discipline.
- There is no right to fight.
- Self-Defense is about protection, not revenge.
- Before using force, a student must reasonably believe force is necessary.
- Student may only use level of force that they reasonably believe is necessary.
- A student must stop using force when it is no longer reasonable to believe force is necessary.
- A student who is the aggressor is not justified.
- A student who provoked the fight is not justified.
- Self-Defense does not apply to mutual combat (both parties consent to fight).
- Force can only be used to protect from another's unlawful force or imminent use of unlawful force.
- Students have no duty to retreat and have a right to stand their own ground.
- Student who wins fight may have been acting in self-defense.
- Fact that a student threw the first punch does not rule out self-defense.
- Student has burden of proof when claiming self-defense.
- No magic words are required to assert a claim of self-defense.

STATE BOARD OF EDUCATION
STATE OF GEORGIA

A.J.,	:	
	:	
Appellant,	:	
	:	
v.	:	**CASE NO.: 2023-18**
	:	
HENRY COUNTY BOARD OF EDUCATION,	:	**DECISION**
	:	
	:	
Appellee.	:	

This is an appeal by A.J. ("Student") from a decision by the Henry County Board of Education ("Local Board") suspending the Student from school through March 10, 2023. The Local Board took this action because it found that Student violated its rules by causing bodily injury to another student. For the reasons set forth below, the Local Board's decision is **AFFIRMED**.

I. FACTUAL AND PROCEDURAL BACKGROUND

On the afternoon of September 16, 2022, the Student was a 10th grader at Locust Grove High School ("School"). The Student was sitting on a crowded school bus next to the window with his legs extended across the seat. A male student approached and asked the Student to move his legs so that the male student could sit down. When the Student did not move his legs, the other student sat on the Student's legs. In response, the Student shoved the other student to the floor. When the other student stood up from the floor, he leaned in toward the Student's face. The Student responded by immediately punching the other student several times in the face. A brief fight ensued. After which Noah Harrell, a teacher, got on the bus and assisted in breaking up the fight. The other student sustained bruising and swelling to his face as a result of the altercation.

The Student was charged with violating Local Board Code of Conduct policy Level 3.4 Excessive Physical Contact. The Student was suspended from September 26, 2022 for 10 days pending a disciplinary hearing on October 7, 2022. At the hearing, the Student and the teacher who broke up the fight gave testimony. The hearing officer found the student guilty and imposed an out-of-school suspension on the Student through March 10, 2023 with the opportunity to attend EXCEL Academy, the Local Board's alternative education school. On October 18, 2022, the Student appealed the hearing officer's decision to the Local Board. On October 24, 2022, the Local Board upheld the hearing officer's decision. Thereafter, the Student filed a timely appeal with the State Board of Education ("State Board").

III. ISSUE ON APPEAL

A. Record Evidence

The Local Board Code of Conduct policy Level 3.4 Excessive Physical Contact states:

> The use of excessive physical force resulting in harmful contact with a student or person other than school personnel referenced in Level 4. This includes, but is not limited to, fights that are beyond a Level 2 fight, that are violent or planned, cause a disruption of the school environment or educational process, group fights of three (3) or more individuals, and/or fights that cause an injury.

The Student argues that he was not the aggressor. He maintains that the other student bullied him and that he used force to protect himself from the other student. However, the video evidence shows the Student landing multiple punches to the other student's face before the other student even attempted to defend himself. The evidence also shows that the other student sustained significant bruising and swelling from the impact of the Student's punches.

After reviewing the evidence and listening to the Student's own testimony, the hearing officer determined that the Student used excessive physical force in violation of the Local Board Code of Conduct policy. The hearing officer sits as the trier of fact. "When that judgment has been made, the State Board of Education will not disturb the finding unless there is a complete absence of evidence." *F.W. v. DeKalb Cnty. Bd. of Educ.*, Case No. 1998-25 (Ga. SBE, Aug. 1998). In this case, the State Board finds that there was sufficient evidence to determine that the Student violated the Local Board's policy.

STATE BOARD OF EDUCATION
STATE OF GEORGIA

I.B.,	:	
	:	
Appellant,	:	
	:	**CASE NO.: 2023-30**
v.	:	
	:	**DECISION**
GWINNETT COUNTY BOARD OF EDUCATION,	:	
	:	
Appellee.	:	

This is an appeal by I.B. ("Student") from a decision by the Gwinnett County Board of Education ("Local Board") suspending the Student from school from on or about November 10, 2022 through June 1, 2023. The Local Board took this action because it found that the Student violated its rules by disrupting the school environment and fighting with another student. For the reasons set forth below, the Local Board's decision is **AFFIRMED**.

II. STANDARD OF REVIEW

A review of a student disciplinary decision by the State Board "shall be confined to the record" and shall not be a *de novo* review. See O.C.G.A. § 20-2-1160(e).

The Georgia Supreme Court has provided the following standard of review for student disciplinary appeals:

> On appeal of a student disciplinary decision, the [State Board] reviews whether the record supports the initial decision of the local school board. The [State Board] applies the any evidence standard of review to the local board's decision as to any factual issue. It is the role of the [fact finder] to weigh the evidence and determine the credibility of witnesses, and not the [State Board]. Under the any evidence standard of review, so long as evidence exists that supports the local board's decision, it should not be reversed on appeal unless the record shows the local board grossly abused its discretion or acted arbitrarily or contrary to law… An abuse of discretion would be present if the local board misapplied the relevant law or if its rulings are not supported by the evidence.
>
> *Henry Cnty. Bd. of Educ. v. S.G.*, 301 Ga. 794 at 798 (2017) (adapted for the State Board and omitted citations of authority).

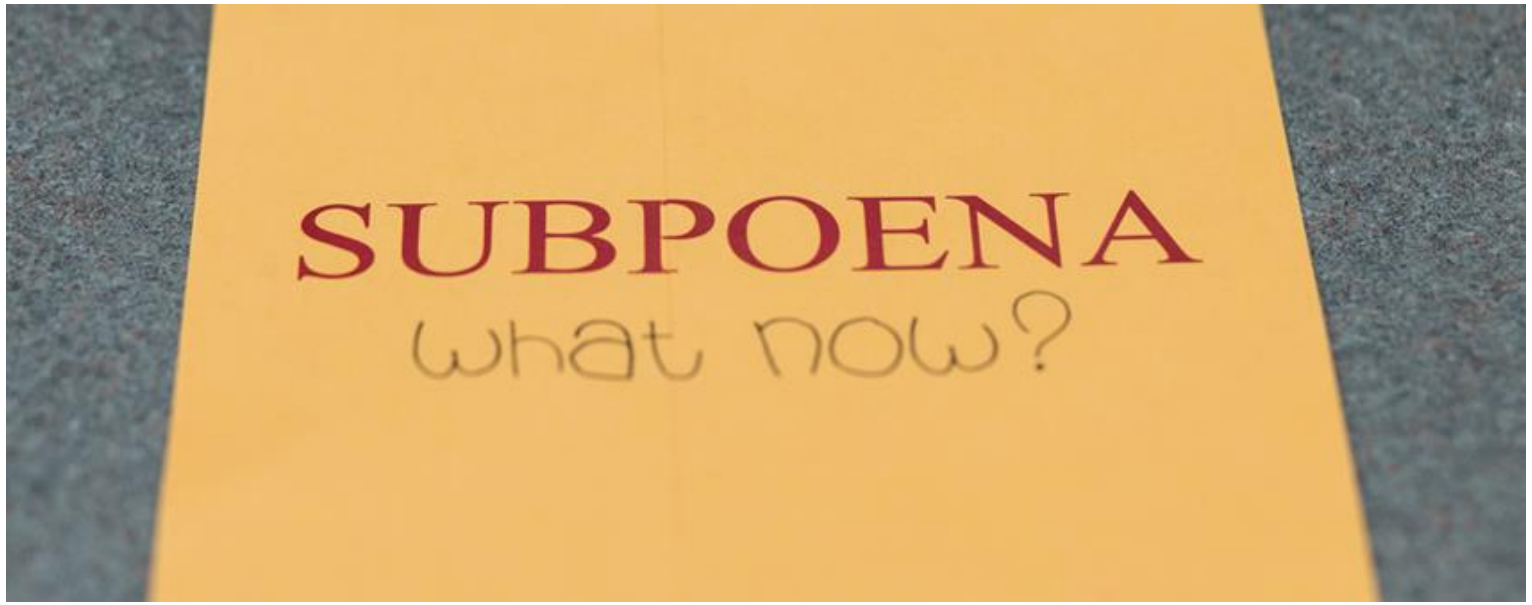
I. FACTUAL AND PROCEDURAL BACKGROUND

On November 7, 2022, the Student, a 9th grader at Duluth High School ("School"), stood up from his seat on a school bus and exchanged insults and challenges with another male student. On a phone video taken by a female student who was also on the bus, the Student can be heard saying, "Do something, n****. Do something." The verbal exchange became a physical fight between the Student and the male student. After the fight began, two of the male student's friends jumped into the fight. The three students overcame the Student, causing him significant physical injury, including a concussion.

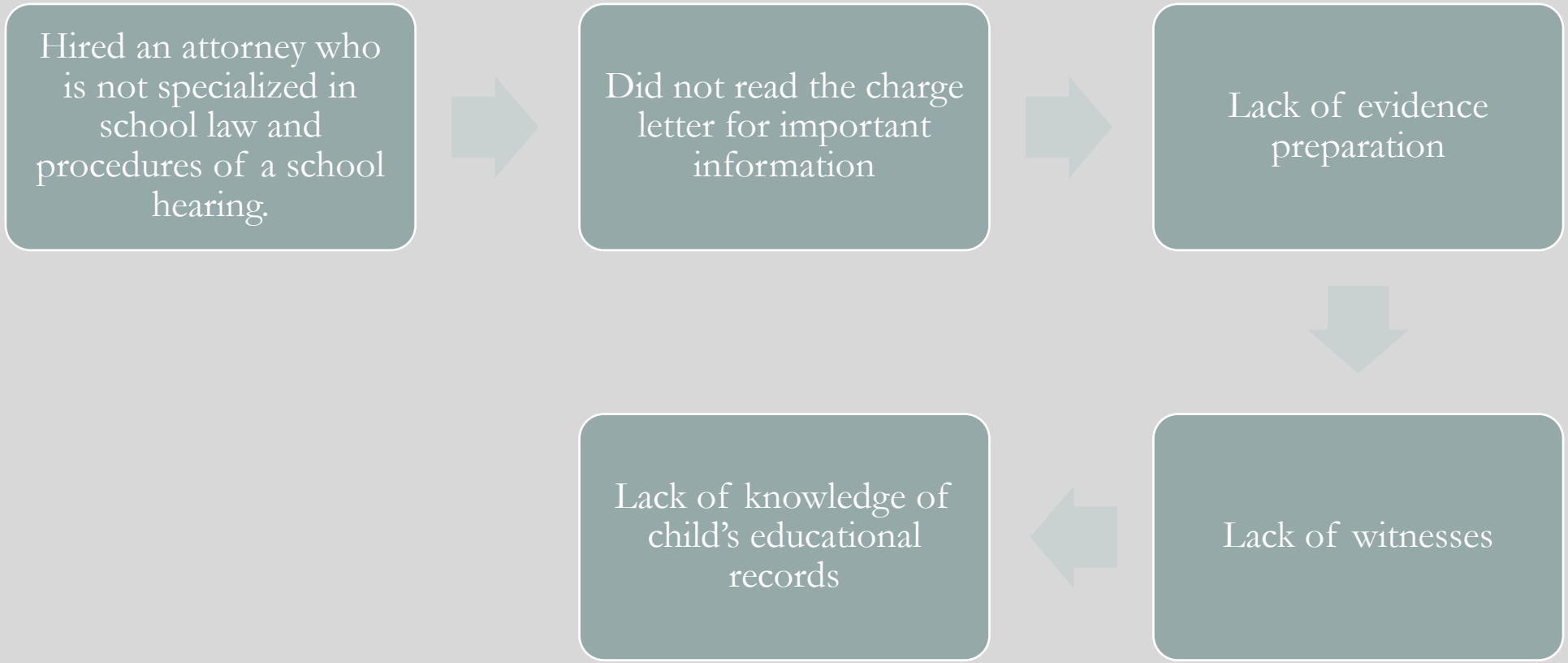
On or about November 10, 2022, the Student was charged with violating Local Board Code of Conduct policy Rule 5BB Fighting and Rule 1DC Disorderly Conduct. The Student was suspended from the School pending a disciplinary hearing set for November 18, 2022. The hearing was continued to December 7, 2022. At the hearing, the hearing officer imposed an out-of-school suspension on the Student through the remainder of the school year with an opportunity to attend the Local Board's alternative school and participate in its early return program. The Student appealed the hearing officer's decision to the Local Board on December 12, 2022. At its December 15, 2022 meeting, the Local Board upheld the hearing officer's decision and notified the Student that the Local Board expected him to participate in restorative practices if the other students were agreeable. Thereafter, the Student filed a timely appeal with the State Board of Education ("State Board").

Subpoenas

- Parents have the right to subpoena witnesses.
- Parents have the burden to deliver the subpoenas.



Unprepared Parents/Attorneys



Unruly Parents

- Angry with the process and procedures
- Defensive of child
- Aggression toward other participants
- Interrupts testimony
- Uses inappropriate language/ insults
- Makes noises
- Badgers the witness

Hearing Safety for Unruly Participants

(6) The agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to do the following: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the agency or the hearing officer;

Dilemmas with Students

Absent Parent

Technology Addiction

"Forced" Statement Claim

Unruly Behavior

Issues with Administrators

Unprepared/ Untrained

Evidence

Timeline of Events

Records

Hearing protocols

Due Process

Professionalism

Attitude toward parents/students is negative or aggressive

Cocky Attitude

Lack of greeting or eye contact

Judgmental/ Condescending/ Cold

Closing Statements

Dilemmas with Interpreters

- Time frame to request/ secure an interpreter in time for the hearing.
- Hearings with multiple interpreters
- Multitude of languages within our county
- Sign language interpreters need breaks
- Time frame of the hearing can be lengthy
- Equipment available vs. no equipment
- Family wants a family member to interpret

YOU DECIDE!

Jurisdiction: Scope of the Code

- **A female student from High School A texts her boyfriend at High School B to let him know that a male student at her school is flirting with her in her gym class. Her boyfriend calls an Uber, leaves High School B, travels to High School A, and has an acquaintance let him in the side entrance of High School A. The acquaintance and the female student lure the "flirting male student" into the hallway, where the boyfriend lands multiple blows to his head, mouth, and stomach area. The "flirting male student" then falls to the floor and receives a concussion. He also has a bloody nose and a swollen eye. Satisfied, the "boyfriend" leaves High School A and takes an Uber back to High School B.**

- ***Does the school have jurisdiction? Why or Why not?***

Search and Seizure

- **School parking lot attendant is driving through the school parking lot as part of his regularly assigned duties. He sees a box of shotgun shells on the seat of the car in the student parking lot. He notifies the Assistant Principal who identifies the student based on the parking lot number and school records. School officials search the car and find a gun in the trunk.**

- ***Did the school have the right to search? Why or Why not?***

Search and Seizure

- **Two students arrive to school late. They come walking into the school from the wooded area behind the school. Two APs are at the attendance desk as they come to check in. Because the students were late and come from the wooded area behind the school, the APs conduct a search. When they are searched, one of the students is in possession of marijuana.**

- ***Did the school have the right to search? Why or Why not?***

Jurisdiction: Scope of the Code

- **Two students ride the bus to school from their neighborhood. Once the school bus arrives on campus, the two students walk off campus to the nearby local park. While there, Student #1 takes out a vape, takes a few hits, and then passes it to Student #2, who also takes a few hits. About that time, the local county police notice the girls vaping at the park and escort them to school.**

- ***Does the school have jurisdiction? Why or Why not?***